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Conceded
54 (New) The test device of claim 53, wherein the antibody binds human chorionic gonadotropin.

55. (New) The test device of claim 48, wherein the conjugate becomes entrapped in the test site.

REMARKS

New claims 40-55 have been added. Upon entry of this paper, claims 27-55 will be pending and under consideration in this application.

Support for proposed new claims 40-55 may be found throughout the application as originally filed. For example, support for claims 40 and 48 may be found, for example, in claims 14 and 22 as originally filed, the second full paragraph on page 3 of the application as filed, the paragraphs bridging pages 4-5, 10-11, and 13-14 of the application as filed, and the Example appearing on pages 17-18 as originally filed. Support for claims 41-47 and 53-55 may be found, for example, on page 18, lines 5-32 of the application as filed. Support for claims 49 and 50 may be found, for example, on page 5, lines 21-25 of the application as filed. Support for claim 51 may be found, for example, in Figures 3 and 4 and the corresponding text of Example 1 of the application as filed. Support for claim 52 may be found, for example, on page 17, line 16 of the application as filed. Applicant believes that no new matter has been introduced by these amendments.

Applicant respectfully requests that the Examiner provide an initialed copy of the PTO-1449 form that was submitted to the Office on September 24, 2001. For convenience, copies of the Supplemental Information Disclosure Statement and PTO-1449 form submitted to the Office on September 24, 2001 are enclosed.

Request For Telephonic Interview

The undersigned respectfully requests a telephonic interview with Examiner Do prior to issuance of a further Office action in the instant application. The undersigned believes that a

interview may be sufficient to resolve any issues remaining in the case. The Examiner is invited to call Duncan A. Greenhalgh at 617-248-7317 to arrange a convenient time for the interview.

Rejection of Claims 27-39 Under 35 U.S.C. § 103

Claims 27-39 presently stand rejected under 35 U.S.C. § 103 over Brown III *et al.*, EP 217 403 A (“Brown III”), in view of Rosenstein, U.S. Patent No. 5,591,645 (“Rosenstein”).

Applicant respectfully traverses this rejection in view of the following comments.

Applicant submits that Brown III has been discussed in detail in the responses of January 8, 2001, September 20, 2001 and May 28, 2002, the substance of which is incorporated here. The Office action on page 2 suggests that, among other things, the device of Brown III comprises a test strip of a porous fiber matrix that “equates [to the claimed] sorbent material which defines a flow path for transporting the liquid sample therealong from a sample contact region to a test site and a control site.” Applicant respectfully disagrees with this statement for the reasons already of record.

Applicant submits that the Brown III device (see, for example, Figure 1 of Brown III) is based on a well-type format where a liquid sample of interest passes through the thickness of a matrix rather than along the length of the matrix. In contrast, in the devices of the claimed invention, once a liquid sample of interest is applied to a sample contact region, the liquid sample traverses the test strip lengthwise by lateral flow from the sample contact region through a test site and a control site, both of which are located downstream of the sample contact region. In fact, Applicant submits that lengthwise flow of the liquid sample likely would be detrimental to the operation of the Brown III device because the assay of Brown relies upon the vertical transport of sample through rather than lateral transport along the matrix to produce a meaningful result.

In addition, the Office action acknowledges that Brown III fails to teach or suggest using as a detection system a colored particulate material, which is required by all the pending claims. The Office action appears to rely on the teachings of Rosenstein to make up for the deficiencies in Brown III. Applicant notes, however, that Rosenstein was involved in Patent Interference

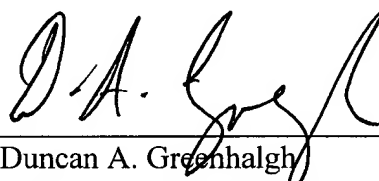
Nos. 104,148 and 104,476 against co-owned and related U.S. Patent Application No. 08/465,675 and U.S. Patent No. 5,714,389, respectively. For convenience, Applicant encloses copies of the Final Decisions in both interferences. As a result of the interferences and the submissions already of record, Applicant respectfully submits that the reliance on Rosenstein in the Office Action is improper. Applicant respectfully submits that Rosenstein may not be relied upon to provide that which Brown III lacks.

In view of the foregoing, because Brown III fails to teach or suggest the claimed subject matter taken as a whole, and because Rosenstein may not be used to make up for the deficiencies in Brown III, Applicant respectfully requests that the rejection of claims 27-39 under 35 U.S.C. §103 be reconsidered and withdrawn.

Conclusion

In view of the foregoing, Applicant respectfully submits that the case is in condition for immediate allowance. Early favorable action is respectfully solicited.

Respectfully submitted,



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Date: February 13, 2003
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